

CIVIL REVISION APPLICATION No 700 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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MADANLAL FAKIRCHAND

Versus

BACHUBHAI MOHANLAL BAROT

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Appearance:

MR PK JANI for Petitioner

MR AKSHAY H MEHTA for Respondent No. 1

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 17/02/2000

ORAL JUDGEMENT

#. The present revision application is filed by the petitioner original defendant against whom the respondent had filed the suit being Regular Civil Suit No.17/80 in the court of Civil Judge ( Junior Division), Mehsana. The said suit was filed for getting possession of the suit premises which is a cabin attached with the open land and according to the plaintiff he is the owner of

the aforesaid cabin which he had let out to the defendant. According to the plaintiff the defendant has not paid the rent from 31.3.1977 and therefore, after serving required notice under Sec.12 (2), the suit for possession as well as for arrears of rent was filed.

#. The defendant appeared in the suit and filed his written statement at Ex.16, he denied that he was in arrears of rent. It was stated by the defendant that one Motilal Shah is the owner of the suit land. That the plaintiff had constructed the cabin over the said land and he let out the same to the defendant at the rate of Rs.30/-p.m. That the suit cabin was in dilapidated condition and the defendant had handed over the possession of the said cabin to the plaintiff in March, 1977. Thereafter the defendant had constructed the new cabin with the consent of the land owner Motilal Shah. It was therefore stated that there was no question of payment of rent to the plaintiff since there was no relationship of landlord and tenant between the defendant and plaintiff since March, 1977. It was therefore prayed that the suit be dismissed.

#. The learned trial judge raised various issues at Ex.19 and after recording the evidence ultimately decreed the suit with cost. The defendant was asked to pay rent at the rate of Rs.30/-p.m. from the date of the suit till handing over the possession. The aforesaid decree of the trial court was challenged by the defendant by filing an appeal being Civil Appeal No.150/81. The learned appellate judge dismissed the said appeal and confirmed the decree of the trial court. The aforesaid decree of the appellate court is challenged by the present petitioner in this revision application. At the time of hearing of this revision application Mr.Jani, learned advocate for the petitioner has stated that the possession of the cabin was handed over in March, 1977 and that there was no relationship of landlord and tenant between the parties. It was argued that the suit could not have been presented in the rent court as there was no relationship of landlord and tenant between the plaintiff and defendant. It was further argued by Mr.Jani that the old cabin was in dilapidated condition and therefore the defendant had handed over the possession of the same to the plaintiff before the filing of the aforesaid suit. It was stated that there was no question of arrears of rent which was required to be paid to the plaintiff. It was also submitted that after handing over the possession to the plaintiff, the defendant had constructed cabin on his own with the permission of the land owner. Said newly constructed cabin was demolished by the officers of

the State since it was coming within the Ribbon Development Rules.

#. So far as the first contention of Mr.Jani is concerned. I do not find any substance in the same. It is not in dispute that the land in question belongs to one Motilal Shah and the present plaintiff was allowed to construct a cabin over the aforesaid piece of land, therefore so far as the cabin is concerned it was let out by the present plaintiff to the present defendant and on the basis of doctrine of dual ownership, the plaintiff was the owner of the super structure i.e. cabin in question. Therefore the plaintiff was owner of cabin and defendant was the tenant of the same. Therefore there was relationship of landlord and tenant between the parties.

#. The appellate judge has considered the evidence of the parties in para 10 of his judgment. It was not believed by the courts below that the defendant had handed over the old cabin to the plaintiff in March, 1977, it was found that the cabin at the existing place was found to be in dilapidated condition and the say of the plaintiff was found to be true. In para 10 of the judgment the learned appellate judge has narrated actual condition of the cabin. The defendant did not examine the original owner Motilal Shah to prove that he allowed the defendant to put new cabin in place of old cabin. The appellate judge after appreciating the evidence has confirmed the finding of the trial court. It was found that the defendant was occupying the cabin as the tenant of the plaintiff on the date of filing of the suit and he was in arrears of rent at the rate of Rs.30/-p.m. The aforesaid finding of the appellate court cannot be disturbed by this court sitting in revision. I do not find any substance in the argument of Mr.Jani. It is needless to say that the defendant is liable to pay the rent/mesne profit to the plaintiff till the date when cabin was removed by the Government. In view of aforesaid facts, the revision application deserves to be dismissed. The same is accordingly dismissed. Rule is discharged. Interim relief vacated.

kks